



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAY 08 2009

REPLY TO THE ATTENTION OF
AE-17J

VIA EXPRESS MAIL

Kenneth R. Will, President and Registered Agent
VIM Recycling, Inc.
29861 Old US Highway 33,
Elkhart, Indiana 46516

Kenneth R. Will, President and Registered Agent
VIM Recycling, Inc.
64654 U.S. 33 East
Goshen, Indiana 46526

Vince McMahon, President
Patrick McMahon, Registered Agent
VIM Enterprises, Inc.
920 Rathbone Avenue
Aurora, Illinois 60506

Kenneth R. Will, Registered Agent
K.C. Industries, LLC
22907 S.R. 120
Elkhart, Indiana 46516

Re: EPA Notice of Violation, Issued Pursuant to Section 113(a)(1) of the Clean Air Act, 42 U.S.C. § 7413(a)(1), to VIM Recycling, Inc. Concerning Alleged Violations of the Act at Respondents' Facility located at 29861 Old US Highway 33, Elkhart, Indiana

Dear Sirs:

The U.S. Environmental Protection Agency, Region 5 (EPA or the Agency) is issuing the enclosed Notice of Violation (NOV) to the above listed Respondents pursuant to Section 113(a)(1) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a)(1). EPA has determined that Respondents are in violation of Section 110 of the Act, 42 U.S.C. § 7410 and the Indiana State Implementation Plan.

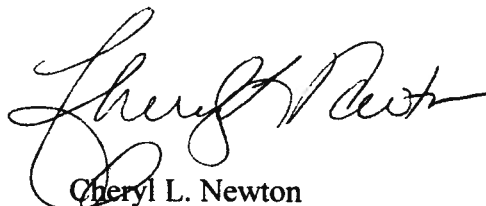
The Agency has several enforcement options under Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1). These options include issuing an administrative compliance order, issuing an administrative penalty order and bringing a judicial civil or criminal action.

Accordingly, EPA is offering you an opportunity to confer with the Agency about the violations alleged in the NOV. The conference will give you the opportunity to present information on the specific findings of violation. We expect that you would also, at that time, be prepared to present a plan to immediately abate the violations. Given the seriousness of the violations, EPA would like to conduct this conference within the next seven (7) business days. Accordingly, please notify the Agency with three (3) business days of the receipt of this notice when Respondents are available to meet with EPA within the proposed time period above.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney(s) represent you at this conference.

The EPA contact in this matter is Shannon Downey. You may call her at (312) 353-2151 to request and schedule a conference.

Sincerely,



Cheryl L. Newton
Director
Air and Radiation Division

Enclosure

cc: Phil Perry, Chief
Office of Enforcement, Air Section
Indiana Department of Environmental Management

John P. Steketee
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5 (C-14J)

Valerie Tachtiris
Deputy Attorney General, Environmental
Office of Attorney General Gregory F. Zoeller
Indiana Government Center South, Fifth Floor
302 West Washington Street
Indianapolis, Indiana 46204

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

VIM Recycling, Inc.
29861 Old US Highway 33
Elkhart, Indiana

and

VIM Recycling, Inc.
64654 U.S. 33 East
Goshen, Indiana

and

VIM Enterprises, Inc.
920 Rathbone Avenue
Aurora, Illinois

and

K.C. Industries, LLC
22907 S.R. 120
Elkhart, Indiana,

NOTICE OF VIOLATION

EPA-5-09-IN-12

**Proceedings Pursuant to Section 113(a)(1) of
the Clean Air Act, 42 U.S.C. § 7413(a)(1)**

RESPONDENTS.

NOTICE OF VIOLATION

The U.S. Environmental Protection Agency, Region 5 (EPA or the Agency) hereby finds that the following Respondents:

VIM Recycling, Inc.
29861 Old US Highway 33
Elkhart, Indiana

and

VIM Recycling, Inc.
64654 U.S. 33 East
Goshen, Indiana

and

VIM Enterprises, Inc.
920 Rathbone
Aurora, Illinois

and

K.C. Industries, LLC
22907 S.R. 120
Elkhart, Indiana

are in violation of Section 110 of the Clean Air Act (the Act), 42 U.S.C. § 7410. Specifically, EPA alleges that Respondents are in violation of the open burning provisions of the Indiana State Implementation Plan at Respondents' facility located at 29861 Old U.S. Highway 33, Elkhart, Indiana, as follows:

Statutory and Regulatory Authority

- 1) Section 110 of the Clean Air Act, as amended, (the Act), 42 U.S.C. § 7410, requires that each State, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 7409 of the Act for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such was were to adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State.
- 2) Section 113(a)(1) of the Act), 42 U.S.C. § 7413(a)(1), states that whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28)—(A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit, (B) issue an administrative penalty order in accordance with subsection (d) of this section, or (C) bring a civil action in accordance with subsection (b) of this section.
- 3) Section 302 (e) of the Act, 42 U.S.C. § 7602(e), defines the term “person” to include an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

- 4) Section 302 (g) of the Act, 42 U.S.C. § 7602(g), defines the term “air pollutant” as any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term “air pollutant” is used.
- 5) On June 22, 1978, EPA approved the Indiana Air Pollution Control Board regulation APC 2 (IN APC 2), enacted pursuant to the authority found in IC 13-1-1 and IC 13-7-4 and amending in its entirety Indiana Regulation APC 2 promulgated on December 6, 1968 and all resolutions adopted there under, as part of the federally enforceable Indiana State Implementation Plan (IN SIP). 43 Fed. Reg. 26721 (June 22, 1978). The effective date was July 24, 1978. Indiana has since re-codified IN APC 2 as 326 IAC-4-1.
- 6) The IN SIP defines an “open burning” as the combustion of any matter in the open or in an open dump.
- 7) The IN SIP defines “open,” as used in open burning, as: a) the products of combustion are emitted directly into the open air without passing through a stack or chimney; or b) combustion occurs in a device other than an approved incinerator or boiler.
- 8) The IN SIP defines “material” as all biodegradable and non-biodegradable substances including garbage, rubbish ashes, commercial, industrial and institutional wastes, wood and wood products.
- 9) The IN SIP states that no person shall open burn any material except as provided in Sections 3 or 4 (Exemptions).

Finding of Fact

- 10) Respondent VIM Recycling, Inc., 64654 U.S. 33 East, Goshen, Indiana is a corporation incorporated under the laws of the State of Illinois.
- 11) Respondent VIM Recycling, Inc., 29861 Old US Highway 33, Elkhart, Indiana is a branch location of VIM Recycling, Inc., 64654 U.S. 33 East, Goshen, Indiana.
- 12) Respondent VIM Enterprises, Inc., 920 Rathbone Avenue, Aurora, Illinois is a limited partnership formed under the laws of the State of Illinois.
- 13) K.C. Industries, LLC, 22907 S.R. 120, Elkhart, Indiana, is a corporation incorporated under the laws of the State of Indiana.
- 14) Respondents own and/or operate a wood recycling facility located at 29861 Old US Highway 33, Elkhart, Indiana 46516 (the Facility).

- 15) The facility consists of outdoor piles of construction and demolition materials in various stages of processing.
- 16) On May 5, 2009, representatives of EPA and the Indiana Department of Environmental Management (IDEM) visited the Facility.
- 17) During the May 5, 2009 site visit Mr. Paul Ruesch and Mr. Jacob Hassan of EPA observed what they believed to be open burning of wood and other materials at the Facility.
- 18) Mr. Ruesch and Mr. Hassan observed and photographed smoke emanating from several locations at a large pile of wood, wood products and other construction and demolition material located in the northern central portion of the Facility.
- 19) Mr. Ruesch and Mr. Hassan also obtained and photographed a burning piece of wood from the subject pile of wood, wood products and other construction and demolition material.
- 20) Mr. Ruesch and Mr. Hassan were told by representatives of Respondents that the subject pile of wood, wood products and other construction and demolition material needed to be maintained several times daily to control the burning of the pile.
- 21) Mr. Ruesch and Mr. Hassan stated that the air in the neighborhood directly downwind of the facility smelled of acrid smoke.
- 22) Mr. Ruesch and Mr. Hassan also observed numerous physical conditions at the Facility which they believe could prevent or limit access by fire-fighting crews and other emergency responders to the subject pile of wood, wood products and other construction and demolition material should the subject pile become engulfed in flames and require emergency suppression measures.
- 23) Several persons living near the facility alleged in a April 16, 2009 citizen suit notice under the Section 6972(a)(1) of the Resource Conservation and Recovery Act, as amended, (RCRA), 42 U.S.C. § 6972(a)(1), that since 2000 harmful emissions from smoldering wood waste have been allegedly released to open air from Respondents' Facility.
- 24) These persons also allege that polluted smoke, particulate matter and noxious odors from Respondents' facility has created, and is creating, a nuisance on their properties and other private and public properties near the Facility.
- 25) These persons also allege that polluted smoke, particulate matter and noxious odors from Respondents' facility have caused, and are causing, numerous health problems to persons living near the Facility.
- 26) In June of 2007, there was an explosion and massive fire at Respondents' Facility to which the Baugo Fire Department and several other supporting Departments were required to respond for several days.

Conclusions of Law and Violations

- 27) Respondents are persons as defined by Section 302 (e) of the Act, 42 U.S.C. § 7602(e).
- 28) The smoke being emitted from Respondents' facility is an air pollutant as defined by Section 302 (g) of the Act, 42 U.S.C. § 7602(g).
- 29) The open burning at Respondents' facility is in violation of the IN SIP.
- 30) The open burning at Respondents' facility is in violation Section 110 of the Act, 42 U.S.C. § 7410.
- 31) None of the exemptions found in the IN SIP apply to the open burning currently occurring at Respondents' facility.

Date

5/8/09

Cheryl L. Newton

Director

Air and Radiation Division

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent a Notice of Violation, No. EPA-5-09-IN-12, by Express Mail to:

Kenneth R. Will, President and Registered Agent
VIM Recycling, Inc.
29861 Old US Highway 33,
Elkhart, Indiana 46516

Kenneth R. Will, President and Registered Agent
VIM Recycling, Inc.
64654 U.S. 33 East
Goshen, Indiana 46526

Vince McMahon, President
Patrick McMahon, Registered Agent
VIM Enterprises, Inc.
920 Rathbone Avenue
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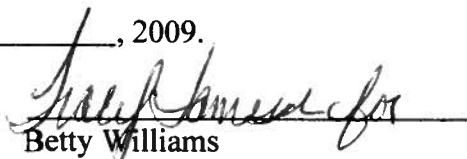
Kenneth R. Will, Registered Agent
K.C. Industries, LLC
22907 S.R. 120
Elkhart, Indiana 46516

I also certify that I sent copies of the Notice of Violation by first class mail to:

Phil Perry, Chief
Office of Enforcement, Air Section
Indiana Department of Environmental Management

Valerie Tachtiris
Deputy Attorney General, Environmental
Office of Attorney General Gregory F. Zoeller
Indiana Government Center South, Fifth Floor
302 West Washington Street
Indianapolis, Indiana 46204

on the 8 day of May, 2009.


Betty Williams
Secretary
AECAS, (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 8490 0920 0315